



AN ACT GENERALLY REVISING BANKING LAWS; PROVIDING FOR THE MUTUAL SAVINGS AND LOAN ASSOCIATION ACT; PROVIDING ADMINISTRATIVE HEARING AND PENALTIES; PROVIDING CRIMINAL LIABILITIES; PROVIDING FOR EXAMINATIONS BY THE DEPARTMENT; PROVIDING FOR MUTUAL ASSOCIATIONS; PROVIDING FOR DEPARTMENT RULEMAKING; PROVIDING REPORTS FOR THE DEPARTMENT; PROVIDING FOR CONFIDENTIALITY; PROVIDING PROHIBITED PRACTICES; PROVIDING FOR FORMATION OF A MUTUAL ASSOCIATION; PROVIDING FOR DEPARTMENT INVESTIGATIONS; PROVIDING FOR ARTICLES OF INCORPORATION AND BYLAWS REQUIREMENTS; PROVIDING FOR A CERTIFICATE OF AUTHORITY TO COMMENCE BUSINESS; PROVIDING FOR CONVERSION FROM A FEDERAL MUTUAL SAVINGS AND LOAN TO A STATE MUTUAL SAVINGS AND LOAN; PROVIDING FOR CONVERSIONS INTO FEDERAL SAVINGS AND LOAN ASSOCIATIONS; PROVIDING REQUIREMENTS OF A STATE MUTUAL ASSOCIATION; PROVIDING REQUIREMENTS FOR MEMBERSHIP IN A FEDERAL HOME LOAN BANK; PROVIDING FOR MERGERS OF MUTUAL ASSOCIATIONS; PROVIDING FOR SALES OF BRANCHES; PROVIDING FOR BUILDING AND LOAN ASSOCIATIONS AND REQUIREMENTS; PROVIDING FOR INVESTMENT IN CERTAIN SECURITIES; PROVIDING FOR CERTIFIED CHECKS; PROVIDING DEPOSIT REQUIREMENTS; PROVIDING GENERAL PROVISIONS; PROVIDING DEPARTMENT RESPONSIBILITY; PROVIDING FORMATION AND REORGANIZATION REQUIREMENTS; PROVIDING FOR OPERATION AND REGULATION; PROVIDING FOR DISSOLUTION, CLOSING, AND LIQUIDATION; PROVIDING FOR FEDERAL DEPOSIT INSURANCE CORPORATIONS; PROVIDING FOR REMOVAL OF DIRECTORS OR OFFICERS OF FINANCIAL INSTITUTIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND REPEALING SECTIONS 32-2-101, 32-2-102, 32-2-103, 32-2-104, 32-2-105, 32-2-106, 32-2-107, 32-2-108, 32-2-109, 32-2-110, 32-2-111, 32-2-201, 32-2-202, 32-2-203, 32-2-204, 32-2-205, 32-2-206, 32-2-207, 32-2-208, 32-2-209, 32-2-210, 32-2-211, 32-2-212, 32-2-232, 32-2-233, 32-2-241, 32-2-242, 32-2-243, 32-2-244, 32-2-245, 32-2-251, 32-2-252, 32-2-253, 32-2-254, 32-2-255, 32-2-256, 32-2-257, 32-2-261, 32-2-262, 32-2-263, 32-2-264, 32-2-271, 32-2-301, 32-2-302, 32-2-303, 32-2-304, 32-

2-305, 32-2-306, 32-2-307, 32-2-308, 32-2-309, 32-2-401, 32-2-402, 32-2-403, 32-2-404, 32-2-405, 32-2-406, 32-2-407, 32-2-408, 32-2-409, 32-2-410, 32-2-411, 32-2-412, 32-2-413, 32-2-414, 32-2-415, 32-2-416, 32-2-417, 32-2-418, 32-2-420, 32-2-431, 32-2-432, 32-2-441, 32-2-442, 32-2-501, 32-2-502, AND 32-2-503, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title -- application -- purpose. (1) [Sections 1 through 135] may be cited as the "Mutual Savings and Loan Association Act".

(2) A corporation that has been incorporated for the purpose of encouraging home ownership and thrift and making substantially all of its loans in qualified thrift investments is known in this chapter as a state mutual association of the department, which shall enforce all laws with respect to it.

(3) [Sections 1 through 135] apply to:

- (a) all mutual associations specified in [section 2];
- (b) corporations that subject themselves to [sections 1 through 135]; and
- (c) persons, partnerships, or corporations who by violating [sections 1 through 135] become subject to the penalties provided in [sections 1 through 135].

(4) The purpose of [sections 1 through 135] is to provide the state with a sound system of state-chartered mutual associations by providing for and encouraging the development of state-chartered mutual associations while restricting their activities to the extent necessary to protect the interest of depositors. The purpose includes:

- (a) the sound conduct of the business of mutual associations;
- (b) the conservation of mutual association assets;
- (c) the maintenance of adequate reserves against deposits;
- (d) the opportunity for mutual associations to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;
- (e) the opportunity for mutual associations to serve the citizens of this state;
- (f) the opportunity for mutual associations to participate in and promote the economic progress of

Montana and the United States; and

(g) the opportunity for the management of mutual associations to exercise business judgment in conducting the affairs of their institutions.

(5) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans in qualified thrift investments is known as a mutual association and is under the supervision of the department, which shall enforce all laws with respect to it.

(6) The mutual associations have continual succession and must be organized under the provisions of this chapter.

(7) [Sections 1 through 135] do not restrict the activities of mutual associations for the purpose of protecting any person from competition from financial organizations and does not confer any right or cause of action on any competitor.

(8) This section constitutes the standard to be observed by the commissioner of banking and financial institutions in the exercise of authority under [sections 1 through 135] and provides guidelines in the construction and application of [sections 1 through 135].

Section 2. General applicability. It is unlawful for any corporation, partnership, firm, or individual to engage in or transact business as a mutual association, as defined in [section 3], except by means of a corporation organized for that purpose.

Section 3. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital" means, with respect to a mutual association:

(a) retained earnings; or

(b) at the discretion of the commissioner, any other form of capital, subject to any applicable federal and state laws.

(2) "Commissioner" means the commissioner of banking and financial institutions as provided in 32-1-211.

(3) "Department" means the department of administration provided for in 2-15-1001.

(4) "Deposit" has the meaning provided in 12 C.F.R. 204.2, as amended. The term includes demand deposits, which includes all deposits, the payment of which may legally be required when demanded.

(5) "Division" means the division of banking and financial institutions of the department.

(6) "Federal savings association" means a federal savings and loan association or a federal savings bank doing business under authority granted by the office of the comptroller of the currency or the former office of thrift supervision.

(7) "Institution-affiliated party" means:

(a) any director, officer, or employee of or agent for a mutual association;

(b) any other person who has filed or is required to file a change-in-control notice pursuant to this chapter;

(c) any consultant, joint venture partner, or other person as determined by the commissioner who participates in the conduct of the affairs of an insured depository institution; and

(d) any independent contractor, including any attorney, appraiser, or accountant, who knowingly or recklessly participates in any violation of any law or rule, any breach of fiduciary duty, or any unsafe or unsound practice that caused or is likely to cause more than a minimal financial loss to or a significant adverse effect on the mutual association.

(8) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(9) "Member" means all holders of the mutual association's savings, demand, including other authorized members on accounts.

(10) "Mutual association" means any corporation that has been incorporated to conduct the business of receiving money on deposit from its members and making substantially all of its loans on one-to-four family real estate mortgage security. The term includes a savings and loan association formed without authority to issue stock.

(11) "Portfolio assets" has the same meaning as provided in 12 U.S.C. 1467a, as amended.

(12) "Qualified thrift investments" has the same meaning as provided in 12 U.S.C. 1467a, as amended.

(13) "Savings association" or "savings and loan association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan

association, or similar entity organized under the laws of a state. "Savings association" also includes a state mutual association that elects to operate as a savings and loan association under this chapter.

(14) (a) "Service provider" means an entity that provides one or more of the following services to a mutual association:

- (i) data processing services;
- (ii) activities supporting financial services, including but not limited to lending, funds transfer, fiduciary activities, trading activities, and deposit taking;
- (iii) internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and
- (iv) activities related to the business of mutual associations.

(b) The term does not include:

- (i) an entity that provides telecommunications service, internet access service, internet transport services, voice-over internet protocol service, or other internet protocol-enabled service; or
- (ii) a general audience or communications platform.

Section 4. Notice of violation -- administrative hearing -- penalties -- liability. (1) If the department has reasonable cause to believe that a person has violated this chapter, a rule promulgated under this chapter, or an order issued by the department or has made a material misrepresentation to the department by act or omission, the department may issue an administrative notice stating the alleged violation to the person.

(2) The Montana Administrative Procedure Act's provisions for contested cases and judicial review of contested cases apply to civil violations of this chapter.

(3) Any mutual association that maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error, fails to submit or publish any report or information required by this chapter within the period of time specified by this chapter, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report that is minimally late is subject to a penalty of not more than \$500 for each day during which the failure continues or the false or misleading information is not corrected. The mutual association has the burden of proving by a preponderance

of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(4) Any mutual association that fails to submit or publish any report or information required within the period of time specified by this chapter or submits or publishes any false or misleading report or information in a manner not described in subsection (3) is subject to a penalty of not more than \$5,000 for each day during which the failure continues or the false or misleading information is not corrected.

(5) If any mutual association knowingly or with reckless disregard for the accuracy of any information or report described in subsection (4) submits or publishes any false or misleading report or information, the division may assess a penalty of not more than \$10,000 for each day during which the failure continues or the false or misleading information is not corrected.

(6) The department's remedies specified in this chapter are cumulative.

(7) All civil penalties collected pursuant to this section must be deposited in the special revenue account for use by the department in its supervision of mutual associations.

Section 5. Criminal liabilities. (1) A person who knowingly and purposefully violates any provision of this chapter or any rule or order under this chapter shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both. However, if the person has been previously convicted of a felony in any way involving financial institutions, the person shall be imprisoned for not less than 1 year.

(2) The commissioner may refer evidence that may be available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may in the prosecutor's discretion, with or without a reference, institute the appropriate criminal proceedings under this chapter.

(3) The provisions of this chapter do not limit the power of the state to punish any person for any conduct that constitutes a crime.

Section 6. Examination and supervision by department -- duties -- rulemaking. (1) The department shall:

(a) exercise constant supervision over the books and affairs of all mutual associations doing business

in this state; and

(b) investigate the methods of operation and conduct of business of the mutual associations and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound principles of mutual associations.

(2) Except as provided in subsection (3), the department shall:

(a) examine, at least once every 24 months, each mutual association and verify the assets and liabilities of each and investigate the character and value of the assets of each to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined mutual association a report of the examination's findings no later than 60 days after the completion of the examination.

(3) The department may accept as the examination required by subsection (2) the findings or results of an examination of a mutual association that was made by a federal or state regulatory agency or insuring agency of the United States authorized to make the examination.

(4) Whenever a mutual association is subject to examination by the department that causes any of the services listed for a service provider in [section 3] to be performed by itself, by contract or otherwise, the performance is subject to regulation and examination by the department to the same extent as if the services were performed by the mutual association itself.

(5) The department may:

(a) enter into joint examination or joint enforcement actions with other regulatory agencies having concurrent jurisdiction over a mutual association or service provider;

(b) enter into agreements with any depository institution regulatory agency that has concurrent jurisdiction over a mutual association or service provider to:

(i) engage the services of the agency's examiners at a reasonable rate of compensation; or

(ii) provide the services of the department's examiners to the agency at a reasonable rate of compensation; and

(c) disclose to a mutual association information about a service provider of the mutual association.

(6) The department may in the performance of its official enforcement duties:

(a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a

mutual association regarding the affairs and business of the mutual association; and

(b) issue subpoenas and administer oaths.

(7) In the case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the mutual association is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(8) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(9) All officers, directors, agents, and employees of mutual associations doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a mutual association shall:

(a) at all times afford reasonable facilities for examinations;

(b) provide responses and reports to the department as required by the department;

(c) attend hearings and answer under oath the department's inquiries;

(d) produce and exhibit any books, accounts, documents, and property the department desires to inspect; and

(e) in all things aid the department in the performance of its duties.

(10) The provisions of 32-1-212 apply to this chapter.

(11) The department may adopt rules to implement this section.

Section 7. Payments by mutual associations. Each mutual association under the supervision of the department shall pay to the department fees set by the department by rule to recover all of the costs of administering the program for supervision of mutual associations. The department may amend the rule setting the fees on or before June 1 and December 1 of each year. The funds collected must be deposited in the state special revenue fund for the use of the department in its supervision of mutual associations.

Section 8. Examination -- request of directors. If requested in writing, upon the authority of a majority of the board of directors of any mutual association to make an examination of the mutual association, the department shall do so.

Section 9. Department rulemaking. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state mutual associations, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of mutual associations and prescribe the form in which mutual associations report their assets, liabilities, and reserves.

(3) The department may promulgate reasonable rules concerning applications for and determinations on applications for the formation, relocation, closure, and sale of branch mutual associations.

(4) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter.

Section 10. Reliance on order -- limit on liability. (1) A person acting in good faith reliance on a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement.

(2) In the case of an order or declaratory statement that is not of general application, only the person to whom the order or declaratory statement was issued is entitled to rely on it unless a third person is dealing with material facts or circumstances that are substantially the same as those on which the order or declaratory statement was based.

Section 11. Reports to department. (1) A mutual association shall make to the department regular call reports at least four times each year according to the form that may be prescribed by the department, verified by oath or affirmation of the president, vice president, or cashier of the mutual association, and attested by the signature of at least two of the directors other than the subscribing officer.

(2) Each call report must exhibit in detail and under appropriate schedules the resources and liabilities of the mutual association at the close of business on any past day specified by the department. The past day specified by the department, under the provisions of this section, must be the day designated by the comptroller

of the currency of the United States for reports of national banking associations.

(3) The call report must be transmitted to the department within 30 days after the past day specified under subsection (2). A mutual association's successful and timely electronic transmittal of its call report to the applicable federal regulatory authority satisfies the mutual association's obligation to transmit the report to the department. The original signature page of the mutual association's call report that complies with subsection (1) must be permanently retained by the mutual association and available for the department's review.

Section 12. Special reports to department. In addition to the information obtained from the call report required by [section 11], the department may also require a mutual association to furnish a special report in writing, verified as required by [section 11], if in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the mutual association.

Section 13. Confidentiality -- penalties. (1) (a) Reports and statement under [sections 6, 8, and 12] are confidential. Except for information made public by the federal deposit insurance corporation or another federal mutual association authority's publicly accessible website, any information contained in the reports and statements is confidential. Except as provided in subsection (1)(b), confidential information may not be disclosed to persons who are not officially associated with the department and must be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish reports of its examination findings under [sections 6 and 8] to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed to any person not officially associated with the department. The information must be used by the department only to further its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official

report as to the condition of a mutual association must be removed from office and is guilty of a felony. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

Section 14. Prohibited practices. (1) It is unlawful for any person to knowingly and purposefully:

- (a) make any material false statement of facts, statement of accounts, or report to the department; or
- (b) make any false entries in the books of the mutual association.

(2) It is unlawful for any person to knowingly exhibit false documents with the intent to deceive any person authorized to examine a mutual association.

(3) Violations of this section are punishable as provided in [section 5].

Section 15. Loan production office -- rulemaking. (1) A mutual association may:

- (a) establish and maintain a loan production office only after giving notice to the department; or
 - (b) relocate or close a loan production office after giving notice to its customers and the department.
- (2) The department may adopt rules to implement this section.

Section 16. Formation. (1) Five or more individuals who are residents of this state may, with the approval of the commissioner, incorporate a mutual association.

(2) The persons proposing to incorporate a mutual association shall apply for approval to incorporate by submitting the application in a form prescribed by the commissioner, which must be under oath and include all of the following plus any additional information that the department may require by rule as necessary or appropriate in the particular instance for the protection of depositors, borrowers, or members and the public interest:

- (a) the proposed articles of incorporation and bylaws set forth in [sections 20 through 22];
- (b) an application for reservation of a name in accordance with 35-14-402, if reservation is desired by the incorporators and has not been previously filed; and
- (c) information to demonstrate the proposed mutual association will satisfy the following requirements:
 - (i) a persuasive showing that there is a reasonable public necessity and demand for a new mutual

association at the proposed location;

(ii) that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly;

(iii) a persuasive showing that the new mutual association will have sufficient volume of business to ensure solvency and that establishment of the new mutual association organized under the laws of this state will be in the public interest;

(iv) the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner;

(v) an application fee, which must be set by the department by rule; and

(vi) Any other information the commissioner requires by rule or in a specific application.

Section 17. Notice of acceptance of application. If the department determines that a completed application has been received, it shall issue a notice of acceptance of application to the applicant.

Section 18. Notice of proposed incorporation. (1) (a) Within 10 days after receipt from the department of a notice of acceptance of an application, the applicant shall publish notice of the proposed incorporation in a newspaper of general circulation in the county where the mutual association's initial main office is to be located. The applicant shall publish the notice once a week for 2 weeks and furnish a certified copy of the affidavit of publication to the department.

(b) The notice shall specify the name of the proposed mutual association, its location, the amount of the proposed capital, the names of the incorporators, the address of the commissioner, and the date by which comments on the application must be filed with the commissioner, which is 30 days after the date of the first publication of the notice.

(2) If any comments on the application are filed with the commissioner within the 30-day period prescribed in subsection (1), the commissioner shall determine whether the comments are relevant to the requirements for incorporation of the mutual association and, if so, investigate the comments in the manner the commissioner considers appropriate.

Section 19. Department investigation. (1) The department may gather all available information relative to an application. The department may also make, or cause to be made, any investigations of any individual associated with the applicant as may be warranted under the circumstances, including a full background check and credit check.

(2) The department may use any administrative procedure necessary, including the taking of depositions, discovery, subpoenas, and the production of documents, to investigate an application. The Montana Administrative Procedure Act applies.

Section 20. Articles of incorporation. (1) A mutual association's articles of incorporation must contain the following:

(a) the information required by 35-14-202(1);

(b) the name of the city or town and county within the state in which the principal office of the corporation is to be located;

(c) the names and business addresses of the initial incorporators;

(d) the number of the board of directors and the names of those agreed on for the first year; and

(e) the purpose for which the mutual association is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) A mutual association may not adopt or use the name of any other mutual association, and the corporation name must comply with 35-14-401(2) through (4) and 32-1-402.

(3) A mutual association may not be organized or incorporated until the articles of incorporation have been reviewed and approved by the department and until the mutual association has obtained a certificate from the department authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(4) A mutual association may not amend or restate its articles of incorporation until its articles of amendment or restatement have been reviewed and approved by the department. A mutual association shall make a true copy of its articles of incorporation and bylaws and all related amendments available to account

holders at all times in each office of the mutual association and shall on request and payment of a reasonable copying fee deliver to any account holders a copy of the articles of incorporation and bylaws and related amendments.

Section 21. Incorporation. The proposed articles of incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

Section 22. Bylaws. (1) The bylaws must be in conformity with the provisions of this chapter and must be open to inspection by the members at the principal place of business during regular business hours.

(2) The bylaws, among other things, must provide for:

- (a) the character and method of conducting the business of the mutual association, with rules governing the addition of members and the amount of the membership fee;
 - (b) the annual meeting of the members;
 - (c) the annual election and qualification of directors and the term or period during which the directors shall serve;
 - (d) the appointment of officers;
 - (e) the adoption, ratification, and amendment of the bylaws, which may be made either by the members or by the board of directors;
 - (f) the method of voting at the annual meeting; and
 - (g) the periodic investigation of the business and condition of the mutual association.
- (3) The bylaws and any change or amendment of the bylaws are not effective until first reviewed and approved by the department, and a mutual association may not commence the transaction of business until after the bylaws have been reviewed and approved by the department.

Section 23. Capital. (1) The capital of a mutual association must be an amount determined by the commissioner based on the amount and character of the anticipated business of the mutual association and the

safety of prospective depositors.

(2) As used in this section, "capital" means the initial funding required to organize a mutual association.

Section 24. Review of application. (1) The commissioner shall examine all of the facts connected with the application to determine if all of the requirements of law are met, including but not limited to the following:

(a) the proposed articles of incorporation and bylaws, application for reservation of name, applicable fees, and other items required meet the requirements of this chapter;

(b) the population and economic characteristics of the area to be served afford reasonable promise of adequate support for the proposed mutual association;

(c) the competence, experience, character and fitness, financial resources, and integrity of the proposed directors and officers are to command the confidence of the community and warrant the belief that the business of the proposed mutual association will be honestly and efficiently conducted;

(d) the capital of the proposed mutual association is adequate in relation to the amount and character of the anticipated business of the association and the safety of prospective depositors;

(e) the commissioner is satisfied, based on the investigation conducted pursuant to [section 19] and any other facts within the knowledge of the commissioner, that the mutual association is otherwise entitled to commence business; and

(f) the commissioner has received from the federal deposit insurance corporation written confirmation that it has approved the mutual association's application to become an insured state savings association as defined in section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(h), as amended, or the mutual association has received satisfactory assurance from the federal deposit insurance corporation that the proposed mutual association will be accepted for insurance if the incorporators comply with certain slated minor requirements imposed by the federal deposit insurance corporation. The minor requirements must be of a type and character that the commissioner determines can be promptly complied with by the incorporators without serious difficulties.

(2) Within 180 days following the date of acceptance of the application, the commissioner shall approve or disapprove the application of the proposed mutual association on the basis of the examination. In

giving approval, the commissioner may impose conditions to be met prior to the issuance of a certificate of authority to commence business under this chapter.

(3) If the commissioner approves the application, the commissioner shall notify the applicant of the approval and proceed with the steps to complete the application.

(4) If the commissioner denies the application, the denial must be in writing in the form of findings of fact and conclusions of law and order. The applicant may file an administrative appeal pursuant to the Montana Administrative Procedure Act.

(5) The findings and order may not be disclosed to any other party and may not be subject to public disclosure under [section 13] unless the findings of fact and the conclusions of law and order are appealed pursuant to the Montana Administrative Procedure Act.

Section 25. Certificate of authority to commence business. (1) A mutual association organized under this chapter may not accept deposits, incur indebtedness, or transact any business other than business that is incidental to its organization until it receives a certificate of authority to commence business issued by the commissioner.

(2) A mutual association organized under this chapter may not commence business until the capital required in its permission to organize has been deposited to the credit of the financial institution in a depository designated by the directors. When the required capital is deposited, a complete list of the capital depositors, with the name, address, occupation, and amount of capital deposited by each, must be filed with the commissioner, and the list must be verified by the president and secretary of the mutual association.

(3) When the mutual association has completed all steps necessary to begin business, the association shall file a report with the commissioner certifying that it has done everything required by the commissioner before it can be authorized to commence business.

(4) Upon receipt of the report referred to in subsection (3), the commissioner shall examine the affairs of the mutual association and determine whether the mutual association has complied with all of the requirements necessary to entitle it to engage in business.

(5) All transactions conducted by a person in violation of this section are void.

Section 26. Failure to commence business. (1) Any mutual association that fails to commence business as a financial institution within 1 year after receiving a certificate of authorization forfeits that certificate and shall cease all activities. The commissioner shall certify to the secretary of state that the certificate of authority has been forfeited so that the mutual association's articles of incorporation may be terminated by the secretary of state.

(2) On forfeiture, the contributors of initial capital deposits of the mutual association are entitled to the return of any amounts they have paid to the institution, and all expenses incurred in the organization must be borne by the original organizers who were named in the application for permission to organize.

Section 27. Conversion from federal mutual savings and loan association -- state mutual savings and loan association. (1) Any federal mutual savings and loan association organized and existing under the laws and regulations of the United States and duly authorized to operate and actually operating in Montana may convert into a Montana mutual savings and loan association operating under the provisions of this chapter, with the same force and effect as though originally incorporated under the provisions of this chapter, by complying with the rules and regulations of the federal regulatory authority and also by following the procedure set forth in subsection (2).

(2) (a) The federal mutual association shall submit a plan of conversion to the commissioner. When the plan, either with or without amendment, has been approved by the commissioner, it must be submitted to the members of the mutual association as provided in subsection (2)(b).

(b) A meeting of the members must be held on not less than 30 days' notice to each member. Notice of the meeting must be mailed to each member, postage prepaid, to the last-known address of the member shown on the books of the mutual association.

(c) At the meeting of the members of the mutual association, the members may by affirmative vote of a majority of members present, in person or by proxy, resolve to convert the federal mutual association to a state mutual association. A copy of the minutes of the meeting of the members, certified by an appropriate officer of the mutual association, must be filed with the commissioner, accompanied by a conversion fee, which must be set by the department by rule.

(d) Within 30 days after the approval of the proceedings by the commissioner, the mutual association

shall file with the commissioner a copy of the proposed articles of incorporation and proposed bylaws of the mutual association. The proposed articles of incorporation and bylaws must conform to the provisions of the laws of this state.

(e) Upon receipt of the proposed articles of incorporation and bylaws, the commissioner shall make a careful examination and investigation of the facts connected with the conversion of the mutual association, including an examination of its affairs generally and a determination of its assets and liabilities. If it appears that the mutual association, if converted, would lawfully be entitled to conduct business as a state mutual association pursuant to the provisions of this chapter, the commissioner shall issue a final approval to the mutual association.

(f) The mutual association shall finalize the articles of incorporation and bylaws and, upon payment of the filing fees by the mutual association, the division shall file the certificate of authority and articles of incorporation with the secretary of state. Upon issuance and recordation of the certificate of authority and articles of incorporation, the mutual association shall file them with the appropriate federal regulatory authority. Upon the filing, the mutual association ceases to be a federal association and is converted to a state mutual association.

(g) (i) Upon conversion, all of the property of the federal mutual association, including all of its rights, title, and interest in and to all property of any kind whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or that would inure to it, must immediately by act of law and without any conveyance or transfer and without any further act or deed be vested in and become the property of the state mutual association, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same was possessed, held, or enjoyed by the federal savings association.

(ii) The state mutual association is deemed to be a continuation of the entity and the identity of the federal mutual association, operating under and pursuant to the provisions of this chapter, and all rights, obligations, and relations of the federal savings association to or in respect to any person, estate, or creditor, depositor, trustee, or beneficiary of any trust, and to or in respect to any executorship or trusteeship or other trust or fiduciary function, must remain unimpaired. The state mutual association shall by operation of this section succeed to all the rights, obligations, relations, and trusts, and the associated duties and liabilities, and

shall execute and perform each and every right, obligation, trust, and relation in the same manner as if the state mutual association had itself assumed the trust or relation, including the related obligations and liabilities.

Section 28. Conversion into federal savings and loan association. (1) Any mutual association eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure in subsection (2).

(2) (a) At any regular meeting or special meeting of the members of the mutual association called to consider the action and held in accordance with the laws governing the mutual association, the members, by an affirmative vote of the majority, in person or by proxy, may declare by resolution the determination to convert the state mutual association into a federal savings and loan association.

(b) A copy of the minutes of the meeting of the members verified by the affidavit of the president or vice president and the secretary of the meeting must be filed with the department within 10 days after the meeting. The verified copy of the minutes of the meeting when filed is presumptive evidence of the holding of and action of the meeting.

(c) Within a reasonable time and without any unnecessary delay after the adjournment of the meeting of the members, the mutual association shall take any action necessary to make it a federal savings and loan association. Within 10 days after receipt of the federal charter, the charter must be filed with the department. Upon filing, the mutual association ceases to be a state mutual association and is thereafter a federal savings and loan association.

Section 29. Requirements of state mutual association. A mutual association must have its qualified thrift investments:

- (1) equal or exceed 50% of its portfolio assets; and
- (2) continue to equal or exceed 50% of its assets on a monthly average basis in 9 out of every 12 months.

Section 30. Directors -- meetings -- officers. (1) Within 30 days after the corporate existence of a mutual association begins, the directors of the mutual association shall hold an organizational meeting and

shall elect officers pursuant to the provisions of this chapter and the bylaws of the mutual association. At the organizational meeting, the directors shall take other action that is appropriate for beginning the transaction of business by the mutual association. The department may extend, by order, the time within which the organizational meeting must be held.

(2) The incorporators of the mutual association shall serve as directors until the first meeting of the members to be held at the time provided for by this chapter or until their successors are elected and qualified, after which the directors will be elected by the members of the mutual association in accordance with the provisions of this chapter and the bylaws of the mutual association.

(3) The directors, unless otherwise provided by the bylaws of the mutual association, shall elect or appoint all officers of the mutual association. The directors, when appointed or elected, shall file with the department their oath of office, as provided in election or appointment of mutual association directors. Meetings of the board of directors must be held at least once each month.

Section 31. Board of directors -- qualifications, tenure, and vacancies. (1) The affairs of the mutual association must be managed by a board of directors consisting of no fewer than three persons. At least two-thirds of the board must be residents of this state. Directors need not be members of the corporation unless required by the articles of incorporation or bylaws. A person who has been convicted of a felony may not be elected a director.

(2) (a) The directors must be elected for a term of 1 year at the annual meeting of the members. The annual meeting must be held before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation is not dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons elected will hold their office until successors are elected and qualified.

(b) Every director shall take and subscribe an oath that the director will diligently and honestly perform the director's duty in the office and that the director will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths must be made in duplicate. One copy must be transmitted to and filed with the department, and one copy must be kept on file in the office of the mutual association.

Section 32. Selection of officers and employees -- minutes of meetings. (1) The board of directors of a mutual association shall hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice presidents, a cashier, one or more assistant cashiers, and other officers and employees that the board may from time to time consider to be in the best interest of the mutual association, and the board shall fix their compensation. The president must be chosen from the board of directors.

(3) (a) The board of directors shall keep a correct report of the meetings of the board and of the members. This record of the meetings of the board of directors must be signed, manually or electronically, by the presiding officer and the person responsible for preparing the minutes.

(b) The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact.

(c) A person who makes a material false entry in the record of the board meetings or who makes a material change or alteration of an entry made in the record is subject to removal pursuant to [section 73].

Section 33. Members -- proxies. (1) A depositor of a mutual association is a voting member and has an ownership interest in the mutual association as may be provided in the terms and conditions set forth in the articles of incorporation and bylaws of the mutual association.

(2) The bylaws of a mutual association may provide that all borrowers from the mutual association are members and, if so, must provide for their rights and privileges.

(3) Unless otherwise provided in the articles of incorporation or bylaws, a proxy granted by a depositor to the officers and directors of a mutual association expires on the date specified in the proxy. If no date is specified, the authority granted by the proxy is perpetual.

(4) The written proxy appointment is separate and distinct from any deposit agreement, any loan agreement, or any other agreement, statement, document, or disclosure provided by a mutual association to a depositor.

(5) At least once every year, the board of directors of a mutual association shall, by resolution, cause the secretary of the mutual association to mail to every member of the mutual association a blank form of proxy, and the member may withdraw a former proxy and substitute a new proxy for the former proxy. A proxy

continues in force and is binding on the member until the proxy is revoked or another proxy is substituted.

Section 34. Right of examination by member. A member of a mutual association incorporated under the laws of this state who is not a director may not inspect the books and records of the mutual association showing its transactions with a customer. A member may inspect the books and records of the mutual association as provided in 35-14-1602.

Section 35. Federal savings association powers extended to state mutual associations. (1) A mutual association organized under the laws of this state may engage in any activity or business in which the mutual association could engage if it were operating as a federal savings association if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to federal savings associations by federal statute, regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over federal savings associations; and

(b) upon application to and approval by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act on an application under this section within 15 days after receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days. If the department fails to act on the application within 15 days after receipt of the application and does not extend the time period for good cause, the state mutual association may engage in the activity requested without the approval of the department.

Section 36. Surrender of charter by state mutual association. (1) Any mutual association that will become a corporation for carrying on the business of a mutual association under the laws of the United States ceases to be a corporation under the laws of this state.

(2) The members of the board of directors last in office when the corporation became a corporation under the laws of the United States continues to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect the organization by signing the articles of association and the

organization certificate and adopting the regulations as may be just and proper and not inconsistent with the acts of congress.

(3) A change from a state mutual association to a federal savings association may not release the mutual association from its obligations to pay and discharge all of the liabilities created by law or incurred by the mutual association before becoming a federal savings association or any tax imposed by the laws of this state up to the date of the mutual association becoming a federal savings association, in proportion to the time that has elapsed since the next preceding payment.

Section 37. Membership in federal home loan bank. (1) A mutual association may be a member of the federal home loan bank of this federal reserve banking district as far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to a mutual association that is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

Section 38. Merger of mutual associations. (1) (a) Any mutual association doing business in this state that has been in business for at least 5 years may, with the approval of the department if any merger party is a mutual association organized under the laws of this state, merge into one mutual association on terms and conditions lawfully agreed on by a majority of the board of directors of each mutual association proposing to merge.

(b) Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is governed by Title 35, chapter 1, if the resulting mutual association is organized under the laws of this state.

(2) Upon merger:

(a) each mutual association merging party merges into the resulting mutual association and the separate existence of every merging party except the resulting mutual association ceases;

(b) title to all real, personal, and mixed property owned by each merging party is vested in the resulting mutual association without reversion or impairment and without the necessity of any instrument of

transfer;

(c) the resulting mutual association has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting mutual association has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other investment.

(3) Upon merger, the resulting mutual association shall designate and operate one of the prior main offices of the merging mutual associations as its main mutual association office and the resulting mutual association may maintain and continue to operate the main office of each of the other merging mutual associations as a branch.

(4) (a) Upon merger, the resulting mutual association may:

(i) maintain the branches and other offices previously maintained by the merging mutual associations; and

(ii) establish, acquire, or operate additional branches of mutual associations at any location where any mutual association involved in the merger could have established, acquired, or operated a branch under applicable federal or state law if that mutual association had not been a party to the merger.

(b) A resulting mutual association organized under the laws of this state that intends to establish, acquire, or operate a branch under subsection (4)(a)(ii) must receive prior approval from the department as provided for in [section 39], whether or not the branch is to be located within or outside this state.

Section 39. Branches. (1) A mutual association may establish and maintain branches as provided in [section 38] and this section. The formation and operation of a branch in this state by a mutual association organized under the laws of this state require the prior approval of the department. A mutual association organized under the laws of this state may establish, acquire, or operate a branch or loan production office outside of this state if approved by the department and if permitted by the laws of the jurisdiction where the branch or office is to be located.

(2) A branch may offer all services and conduct all business authorized to be offered or conducted by

the mutual association.

(3) A mutual association authorized to do mutual association business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A mutual association located in this state may provide services for other mutual associations located in this state, whether or not those mutual associations are affiliates.

(5) With the prior approval of the appropriate federal regulator and state chartering authority, a mutual association that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a mutual association organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.

Section 40. Sale of branch. Any mutual association may, with the approval of the department, buy from or sell to another mutual association, regardless of where either mutual association is located or doing business, all or substantially all of the business, assets, and liabilities of the selling mutual association's branch or branches that are physically located in this state.

Section 41. Agreement of purchase and sale. (1) The selling and purchasing mutual associations shall enter into an agreement that must contain:

- (a) all of the terms and conditions of the sale;
- (b) proper provision for the assumption, payment, transfer, or retention of all of the liabilities of the selling mutual association as to the branch assets and business sold; and
- (c) proper provision for the assumption, payment, transfer, or retention of the purchasing mutual association of all fiduciary obligations of the branch or branch business sold.

(2) The agreement for purchase and sale of a state mutual association must be authorized and approved by the department. The agreement of purchase and sale of a national savings association must be in accordance with the laws applicable to national savings associations.

Section 42. Mutual association advertising before issuance of charter. It is unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the mutual

association business without first having obtained authority from the department. Any person who violates this section is subject to the penalties in [section 4(5)].

Section 43. Prohibitions on advertising as mutual association -- trade names restricted. (1)

Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to the department and that has not received a certificate to do business as a mutual association from the department may not:

(a) except as for a student financial institution, as defined in 32-1-115, advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit; or

(b) use an office sign at the place where the business is transacted that has on it an artificial or corporate name or other words indicating that:

- (i) the place or office is the place or office of a mutual association;
- (ii) deposits are received there or payments made on checks; or
- (iii) any other form of mutual association business is transacted there.

(2) The person, firm, company, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other words indicating that the business is the business of a mutual association.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in this state may not solicit or receive deposits or transact business in the manner of a mutual association or in a manner that leads the public to believe that its business is that of a mutual association.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to the department and that has not received from the department a certificate to do a mutual association business may not transact business under a name or title

that contains the words “mutual savings and loan association”, “savings and loan association”, “savings and loan”, “mutual association”, “mutual savings association”, “building and loan”, or “building and loan association”, unless the department has granted a waiver.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

- (i) the organization is not acting as a financial institution; and
- (ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$500 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a mutual association and may enter any other order or decree as equity and justice require.

Section 44. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notes or certificates of deposit for them or advertising that the person or entity is transacting the business of a mutual association or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a mutual association, or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, with or without interest, are being issued or that any other form of mutual association business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the

business is the business of a mutual association, must have the proper capital set aside for the purpose of transacting that business and must have received from the department, as provided in this chapter, a certificate to do a mutual association business.

(2) A person who violates any provision of this section is subject to the penalties set forth in [section 4(5)].

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equality and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section shall transact that business according to the provisions of [sections 1 through 135], and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

Section 45. Building and loan associations -- powers and duties. (1) A mutual association may:

(a) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision of the federal government or this state;

(b) sue and be sued, complain, and defend in any court of law or equity;

(c) have a corporate seal, affixed by imprint, facsimile, or otherwise;

(d) appoint officers and agents as its business requires and allow them suitable compensation;

(e) adopt bylaws not inconsistent with the laws of Montana and the rules adopted under the laws of Montana;

(f) raise capital, which must be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by statute and rule, and the holders of the accounts or other accounts must, to the extent as may be provided by such rules and regulations, be members of the association and must have the voting rights and other rights as are provided;

(g) issue notes, bonds, debentures or other obligations, or securities, provided by or under any provision of state statute as from time to time is in effect;

- (h) provide for redemption of insured accounts;
- (i) borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts;
- (j) lend and otherwise invest its funds as authorized by statute and rules;
- (k) wind up and dissolve, merge, consolidate, convert, or reorganize;
- (l) purchase, hold, and convey real estate and personal property consistent with its objectives, purposes, and powers;
- (m) mortgage or lease any real estate and personal property and take the property by gift, devise, or bequest; and
- (n) exercise all powers conferred by law.

(2) In addition to the powers listed in subsection (1), the mutual association may have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

Section 46. Extent that assets may be pledged. No mutual association, mutual association employee, or mutual association officer, except as otherwise authorized by law, may pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 1/2 times the amount borrowed, except as otherwise authorized in writing by the department.

Section 47. Issuance of capital certificates. A mutual association may issue mutual capital certificates as allowed by federal law.

Section 48. No certificate of deposit to be issued for borrowed money. A mutual association may not issue its certificate of deposit for the purpose of borrowing money or make partial payments on any certificate of deposit.

Section 49. Investments of financial institutions. (1) Notwithstanding other provisions of the law, it is lawful for a mutual association operating under the laws of this state to invest the funds or money in its

custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 through 80a-64, as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(2) The department shall publish a list of the permissible type of investments in United States government obligations as provided in subsection (1).

Section 50. Insurance activities -- exemption -- rulemaking. (1) A mutual association may:

(a) except for title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter 17.

(2) A mutual association that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

(3) A mutual association may, upon application to and approval by the department pursuant to [section 35], offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by federal savings associations.

Section 51. Authority of state mutual associations to make real estate loans -- borrower

insurance requirements. (1) A state mutual association has the same authority to make loans on real estate that is given by acts of congress or the federal reserve system to federal savings associations.

(2) A mutual association that is subject to this section may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

Section 52. Investment in certain securities -- rulemaking. (1) A mutual association may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. In addition, unless limited by the department by rule, a mutual association may purchase, sell, underwrite, and hold those investment securities that are derivative transactions that federal savings associations are expressly authorized to purchase, sell, underwrite, and hold. A mutual association may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.

(2) The department may adopt rules to implement this section.

Section 53. Mutual associations authorized to obtain insurance and make loans when approved by federal housing administrator. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate or restricting the term of any such loan or restricting the rate of such loan, it is lawful for any mutual association that has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

Section 54. Federal housing securities eligible collateral. If collateral must or may be furnished by any state mutual association as security for the deposit of any funds and the collateral must or may be deposited with any official of the state pursuant to state law, mortgages insured and debentures issued by the federal housing administrator are considered eligible collateral for these purposes.

Section 55. Acceptance and issuance of drafts -- rulemaking. (1) A mutual association organized and existing under state law may accept for payment at a future date drafts drawn on it by its customers authorizing the holders of the drafts to draw drafts on it or its correspondents at sight or on time of the total amount of drafts accepted for any one person, firm, or corporation that does not at any one time exceed 20% of the capital of the accepting or issuing financial institution.

(2) The department may adopt rules to implement this section.

Section 56. Mutual association's responsibility to provide notice when funds become available for withdrawal. (1) A mutual association shall provide clear and conspicuous written notice of the time periods and exceptions to the periods concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the mutual association after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account; and
(b) posted in a conspicuous manner at each financial institution, automated teller machine location, and other device that accepts deposits.

(3) A deposit slip, envelope, or any other printed form furnished by the mutual association for use in connection with deposits must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information."

Section 57. Certified checks. (1) Whenever a check drawn on a mutual association is certified by any officer or employee of the mutual association, the amount of the check must be immediately charged against the account of the person, firm, or corporation drawing the check.

(2) It is unlawful for an officer or employee of a mutual association to certify a check drawn on the mutual association, unless at the time the check is certified the person, firm, or corporation drawing the check has on deposit with the mutual association an amount of money subject to the payment of the check equal to the amount specified in the check.

(3) An officer or employee who willfully violates the provisions of this section, reports to any device, or receives any fictitious obligation, directly or indirectly, in order to evade the provisions of this section is subject to the penalties set forth in [section 4(5)].

Section 58. Deposit in name of minor. Whenever a deposit is made in a mutual association by or in the name of a minor, the deposit must be held for the exclusive right and benefit of the minor and free from the control or lien of all other persons, except creditors, and must be paid, with any interest due, to the person in whose name the deposit was made. The receipt of the minor is a sufficient release or discharge for the deposit to the mutual association.

Section 59. Demand or time deposits. Demand deposits, within the meaning of this chapter, comprise all deposits payable within 7 days and all savings accounts and certificates of deposit that are subject to not less than 7 days' notice before payment.

Section 60. Safe deposit department. A mutual association may conduct a safe deposit department. The liability of any mutual association for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the mutual association is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

Section 61. Giving security for deposit prohibited -- exceptions. (1) It is unlawful for a mutual association to pledge, mortgage, or hypothecate to a depositor any of its real or personal property as security for a deposit, and any pledge, mortgage, or hypothecation made in violation of this section is unenforceable.

(2) This section does not apply to deposits of the money of the United States, public funds deposited in accordance with the provision of a depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the discretion and supervision of a court of record of Montana or of the United States.

Section 62. Payments to foreign administrator. A mutual association doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to the deceased depositor to an administrator or executor of the depositor duly appointed and qualified in another state, provided that no demand has been previously made by an administrator or executor appointed in any county of this state and the payment discharges the mutual association to make the same from its liability on account of the deposit.

Section 63. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any mutual association may not be included in calculation of its profits, unless the mutual association keeps its books on a complete accrual basis. A mutual association that keeps its books on a complete accrual basis shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the accrued interest is past due, and shall carry on its books accrued interest, taxes, and expenses payable.

Section 64. Past-due and doubtful paper. A savings association carrying any bad debt or a debt of doubtful value as an asset shall, upon the request or demand of the department, collect the debt, put in in good bankable condition, or charge it out of its books.

Section 65. Reserve requirements. (1) A mutual association shall maintain at all times a reserve of that percentage of its deposit liabilities as required by the appropriate federal regulator.

(2) The department may establish reserve requirements if the federal regulator discontinues reserve requirements.

(3) A mutual association whose reserve drops below the legal requirements shall report the matter to the department immediately and as often as the department asks for a report.

(4) When the reserve of a mutual association falls below the legal requirements, the mutual association may not increase its loans or discounts except by discounting or purchasing bill of exchange payable at sight or on demand, and the department shall notify a mutual association whose reserve is below the amount required to make good the reserve.

(5) In arriving at deposit liabilities with regard to mutual association deposits, the net balance of amounts due to and from other financial institutions must be used as the basis for ascertaining the deposit liability to mutual associations against which reserves are carried.

Section 66. Limitations on loans -- rulemaking. (1) The total loans or extensions of credit to a person, partnership, or corporation by a mutual association, including loans to a partnership and to the members of the partnership, may not exceed 15% of the mutual association's capital, plus an additional 10% of the mutual association's capital, if the amount that exceeds the mutual association's 15% general limit is fully secured by readily marketable collateral, as defined in 12 C.F.R. 32.2(v). To qualify for the additional 10% limit, the mutual association must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100% of the amount of the loan or extension of credit that exceeds the mutual association's 15% general limit.

(2) To the extent specified in regulations of the office of the comptroller of the currency, a mutual association may invest in, sell, or otherwise deal in the following loans and other investments without percentage of assets limitation:

(a) account loans -- loans on the security of its savings accounts and loans specifically related to transaction accounts;

(b) residential real property loans -- loans on the security of liens on residential real property;

(c) United States government securities -- investments in obligations of, or fully guaranteed as to principal interest by, the United States;

(d) federal home loan bank and federal national mortgage -- investments in the stock or bonds of a federal home loan bank or in the stock of the federal national mortgage association;

(e) federal home loan mortgage corporation instruments -- investments in mortgages, obligations, or other securities that are or have been sold by the federal home loan mortgage corporation pursuant to section 305 or 306 of the federal home loan mortgage corporation act; and

(f) other government securities -- investments in obligations, participations, securities, or other instruments issued by or fully guaranteed as to principal and interest by the federal national mortgage association, the student loan marketing association, the government national mortgage association, or any

agency of the United States. A savings association may issue and sell securities that are guaranteed pursuant to section 306(g) of the National Housing Act.

(3) The commissioner may adopt rules to implement this section.

Section 67. Bonding of employees. (1) The board of directors of a mutual association shall require bonding for all officers and employees of the mutual association whose duty includes the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the mutual association and its customers.

(2) The board of directors shall, by order entered on the minute books of the board, designate the officers and employees to be bonded and the amount of bonds to be given. Action related to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds must be in a form provided or approved by the department.

(3) The bonds must be approved by the president of the mutual association, and the president's or executive officer's action must be reported to the board of directors.

(4) All bonds required by this section must be kept in the custody of the mutual association subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given.

Section 68. Persons previously convicted -- rulemaking. (1) Unless the commissioner provides written consent:

(a) a person who has been convicted of a criminal offense involving dishonesty or a breach of trust or money laundering or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense may not:

- (i) become or continue as an institution-affiliated party with respect to any mutual association;
- (ii) own or control, directly or indirectly, any mutual association; or
- (iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any mutual association;

and

(b) a mutual association may not permit any person referred to in subsection (1)(a) to engage in any

conduct or continue any relationship prohibited under subsection (1)(a).

- (2) A person who knowingly violates subsection (1)(a) is subject to the penalties in [section 4(5)].
- (3) The commissioner may adopt rules to implement this section.

Section 69. Sale of securities by officer to mutual association. (1) A director, officer, or employee of a mutual association may not, directly or indirectly, for the person's account, for the person, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the mutual association of which the person is a director or officer any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which the director, officer, or employee is personally or financially interested, without a vote of the majority of the board of the mutual association, duly noted on the minutes of the meeting at which the transaction is decided on. The minutes must be signed by a majority of the board.

(2) Any director, officer, or employee of any mutual association who knowingly violates or consents to the violation of this provision is subject to the penalties in [section 4(5)].

Section 70. Real estate that mutual associations may purchase, hold, or convey. (1) A mutual association organized under the provisions of this chapter may purchase, hold, or convey real estate that:

(a) is for its accommodation in the transaction of its business, but the mutual association may not invest an amount exceeding 100% of its paid-up capital in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its mutual association business if property held for future use as a mutual association office site is held pursuant to a detailed written business plan formally adopted by the directors of the mutual association;

(b) is mortgaged to in good faith by way of security for loans previously made or money due to the mutual association;

(c) is conveyed to the mutual association in satisfaction of debts previously contracted in the course of its business; or

(d) it purchases at sales under judgments, decrees, or mortgages held by the mutual association.

(2) The detailed written business plan required by subsection (1)(a) must include information outlining

the manner in which the acquired real estate will be developed for future use as a mutual association office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures.

Section 71. Purchase of obligation of mutual association by officer. A director, officer, agent, or other employee of a mutual association may not, directly or indirectly for the person's own benefit, purchase, sell, or be interested in the purchase or sale of any obligation of the mutual association or of any assets of the mutual association for a sum less than the amount that appears on the face of the obligation or obligations purchased or sold. A person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of the obligations or assets purchased or sold.

Section 72. Fraud by director, officer, agent, or employee. A director, executive officer, agent, or employee of a mutual association is guilty of a felony if that person:

(1) knowingly receives or takes possession of any mutual association property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or fails to cause or direct to be made a full and true entry of the receipt or possession in its books and account; or

(b) concurs in failing to make any material entry in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that mutual association as required by law, to exhibit the books, or to allow the books to be inspected and extracts to be taken from them by the department.

Section 73. Removal of directors, officers, or employees -- hearing. (1) A director, officer, or employee of a mutual association who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent or to have violated [section 32, 72, 75, or 76] must be removed from office by the board of directors of the mutual association on the written order of the department. If the directors

neglect or refuse to remove the director, officer, or employee and any losses accrue to the mutual association by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the failure of the directors to act as provided in this section in any action brought against the board of directors by a depositor or creditor for recovery of losses.

(2) If the board of directors refuses to remove the director, officer, or employee in response to an order of the department, the board of directors may file a request for hearing pursuant to the Montana Administrative Procedure Act.

Section 74. Penalty for unlawful hypothecation of property received. An officer or employee of a mutual association doing business in this state who, except in the manner authorized by law or the contract of the parties, pledges or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into the officer's or employee's hands or into the possession of the mutual association as collateral, for safekeeping or in any other manner, and to which the mutual association has not acquitted full title, is guilty of theft and upon conviction must be punished as for other felonies.

Section 75. Concealing actions from directors. An officer or employee of a mutual association who intentionally conceals from the directors of the association, or from a committee of the mutual association when the directors have delegated authority, any discount or loan made by the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement through which the corporation is obligated, during the same period, is subject to the penalties set forth in [section 4(5)].

Section 76. Theft of funds by directors, officers, or employees. A director, officer, or employee of a mutual association who fraudulently appropriates or abstracts or misapplies any of the money, funds, credits, or property of the mutual association when owned by it or held in trust or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the mutual association or any person

or corporation or to deceive any officer of the mutual association, or any other person, or anyone appointed to examine the affairs of the mutual association or any other person who with like intent aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon conviction shall be imprisoned in the state prison for a period not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

Section 77. False statement to obtain loan. A person who makes a statement, knowing it to be false, for the purpose of obtaining for that person or for any other person, firm, corporation, or association a loan of money from a mutual association or for the purpose of gaining an extension of time for the payment of any debt due the mutual association shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 1 year, or both.

Section 78. Mutual association holidays. In addition to emergency closings authorized by [sections 111 through 115], a mutual association in the state may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.

Section 79. Transaction on holiday. No law of this state may affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a mutual association in this state because it was done or performed during any time other than regular banking hours or on a legal holiday. A mutual association in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, may not be compelled to remain open for transaction of business or to perform any of the acts or transactions in this section on any Saturday after 12 noon or any legal holiday except at its option.

Section 80. Closing on Saturdays authorized -- Saturday treated as holiday. A mutual association and a federal savings association incorporated or organized under the laws of the United States or a federal reserve bank may, at its election, remain closed and refrain from the transaction of business on Saturdays. Any Saturday on which a mutual association remains closed is, with respect to the mutual association, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a

Saturday at or by or with respect to a mutual association, including any federal savings association or federal reserve bank, may be performed on the next succeeding business days, and no liability or loss of any rights of any kind will result from such closing on Saturday or from the nonopening of any mutual association for the transaction of business on any Saturday under the authority of [sections 80 through 82].

Section 81. Mutual association hours and business days. A mutual association may provide for its business hours or business days by giving reasonable notice to the public and providing a copy of the notice to the department.

Section 82. Interest payable at mutual association on Saturday -- how paid. When, by the terms of any note or obligation, interest is payable to a mutual association on any Saturday on which a mutual association is closed pursuant to the authority of [sections 80 through 82], interest payable to the mutual association on that Saturday may be paid in the amount due on that Saturday on the next succeeding business day with the same effect as if paid to the mutual association on Saturday.

Section 83. Destruction of records -- rulemaking. (1) Mutual associations are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a mutual association may not be destroyed. Liability may not accrue against a mutual association destroying any records, except records for which destruction is forbidden by this section, after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for mutual association records other than those records listed in subsection (1).

Section 84. Definitions -- reproductions of mutual association records -- admissibility in evidence -- cost recovery. (1) For the purposes of this section, the following definitions apply:

(a) "Electronic storage" or "electronically stored" means the recording, storage, retention, maintenance, and reproduction of documents using microfiche, data processing, computers, or other electronic

process that correctly and legibly stores and reproduces documents.

(b) "Mutual association records" includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic storage medium, or other information-recording medium used in a mutual association's normal course of business.

(2) (a) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(b) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (2)(a) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(3) Except as provided in subsection (7), mutual associations are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying out business.

(4) In an action or proceeding in which mutual association records may be called in question or be demanded of a mutual association or any officer or employee of a mutual association, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(5) Upon the showing required in subsection (4), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(6) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

(7) A mutual association may, as a condition of providing mutual association records to a third party in response to a subpoena or another legal procedure or request, charge and collect the actual costs incurred in

locating, reproducing, and providing the mutual association records.

Section 85. Admissibility of copies in evidence -- exception when original available. Any photostatic, photographic, or microfilm reproductions, including enlargements, of any original records or files of a mutual association, whether in the form of an entry or entries in a book or any other form of record, are admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event if shown to be made in the regular course of business of the mutual association. Nothing in [sections 83 through 87] may be construed to authorize the use of secondary evidence in administrative or court proceedings if original records are in existence and available for use in accord with the rules of evidence.

Section 86. Destruction or reproduction. Destruction in the regular course of business includes destruction at any time after making reproductions. Reproductions made in the regular course of business include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

Section 87. Application. The provisions of [sections 83 through 87] are applicable to all records in existence on February 23, 1951, and to all records originating after that date and apply to all mutual associations organized under the laws of the state and to all federal savings associations located in the state, as far as applicable to the federal savings associations.

Section 88. Dissolution and disincorporation. (1) Mutual associations may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a mutual association may, on a vote of two-thirds of its members at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts or upon agreement with all of its creditors to a plan of liquidation.

(2) A mutual association that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary

dissolution.

(3) The board of directors of a mutual association whose members have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the mutual association. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the mutual association.

(4) Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors is not being protected. The decision of the department in these matters is controlling.

Section 89. Grounds for closing mutual association. (1) If it appears to the department that any of the following situations have occurred, the department may, in its discretion, close the mutual association and take possession of all of the books, records, assets, and business of every description of the mutual association and hold and retain possession of them until the mutual association is authorized by the department to resume business or until its affairs are liquidated as provided in this chapter, and it shall do so in cases in which a mutual association comes into its possession voluntarily or in the manner provided by law. The situations are as follows:

- (a) a mutual association has willfully violated its charter or a law of this state;
- (b) a mutual association has willfully violated a general rule of the department, made in accordance with law;
- (c) the capital of a mutual association is impaired or for any reason is below the amount required by state or federal law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the mutual association notifies the department in writing that the impairment cannot be made good;
- (d) a mutual association cannot meet or has failed to meet its liabilities as they become due in the regular course of business;
- (e) a mutual association's reserve has fallen below the amount required by state or federal law and it has failed to make good that reserve within 30 days after being requested to do so by the department, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if is continually allowing its reserve to fall below the required amount;

(f) a mutual association is conducting business in an unsafe and unauthorized manner or is in an unsafe and unsound condition;

(g) a mutual association has refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a mutual association has refused to be examined under oath regarding the affairs, business, or concerns of any mutual association as they relate to solvency or matters having to do with the supervision by the department.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its employees and agents may not be held liable civilly or criminally or on their official bonds for action taken under this section or for any failure to act under it.

Section 90. When mutual association insolvent. A mutual association is insolvent within the meaning of this chapter when its capital is absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

Section 91. Deposits in insolvent mutual associations. (1) Except as otherwise provided by the Uniform Commercial Code, whenever a mutual association is insolvent in the manner set forth in this chapter, the mutual association may not accept or receive on deposit any money, financial bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it shall keep all such deposits of money, bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the mutual association from and after the date of the accrual of the insolvency. When the impairment or insolvency has been made good, the deposits received in trust may be transferred to the general assets of the mutual association on and by written consent of the department.

(2) If the insolvency is not made good, then all trust deposits must be returned to the depositors making them.

(3) An officer, director, cashier, manager, member, partner, or managing partner who knowingly accepts or receives, is accessory to, or permits or connives at the receiving or accepting of the trust deposits, except in the manner set forth in this section, is guilty of a felony and upon conviction shall be punished by a fine not exceeding \$10,000 or imprisonment in the state prison for a term not exceeding 5 years, or both.

Section 92. Penalty for receiving deposits when insolvent or for making false statement. (1)

Any officer, agent, or clerk of a mutual association, knowing the mutual association to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in [section 91], who subscribes or makes any false statements or entries in the books of the mutual association, who knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of the mutual association, or who willfully subscribes or makes false reports is subject to the penalties set forth in [section 4(5)].

(2) Any person or the members of any partnership or mutual association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when the person, partnership, or mutual association is insolvent, or who subscribe or make any false statement or entries in the books of any such mutual association, who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any mutual association provided for in this chapter, or who willfully subscribe or make false reports to the department are subject to the penalties set forth in [section 4(5)].

Section 93. Power of closed mutual associations to borrow money from governmental agencies. (1) Except as provided in subsection (2), after applying to and obtaining the approval of the department and the district court of the county in which the mutual association is located, the liquidating agents of closed mutual associations may borrow money from an agency of the federal government on behalf of mutual associations closed and in liquidation. As security for the loan, the liquidating agent may pledge or mortgage assets and properties for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply.

Section 94. Corporate existence -- cessation. (1) The charters and the corporate existence of mutual associations cease automatically and become nonexistent upon the completion of liquidation of the affairs of the mutual association, whether accomplished voluntarily or through a legal process.

(2) For the purposes of this section, a mutual association's affairs are considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

Section 95. Taxes on mutual associations that have ceased to do business. Whenever a mutual association ceases to do business as a mutual association, taxes may not be levied or collected in accordance with the laws governing the assessment of mutual associations but its property must be assessed in accordance with the laws governing the assessment of similar property of private corporations.

Section 96. Penalty for maliciously declaring mutual association insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a mutual association insolvent, the employee or agent forfeits the employee's or agent's office.

Section 97. Resumption after closing. After the department has taken possession of a mutual association, it may permit the mutual association to resume business following conditions approved by the department.

Section 98. Powers of department on closing mutual association -- court proceedings. (1) After taking the assets and business of a mutual association into its possession, the department is authorized to collect all money due to the mutual association and to do other acts necessary to conserve the mutual association's assets and business. The department shall proceed to liquidate the affairs of the mutual association.

(2) The department may, except as limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the mutual association, the speedy and economical liquidation of the assets and affairs of the mutual association, the payment of creditors, or the reopening and

resumption of business when that is practicable or desirable.

(3) The department may institute, in its own name or in the name of the mutual association, legal proceedings it considers expedient for the purposes of subsection (1).

(4) (a) By applying to the district court of the county in which the mutual association is located or to the judge of that court, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets. The sale may be made to officers, directors, or others interested in the mutual association on the consent of the court.

(b) In the court proceedings, the mutual association must be made a party by notice issued on order of the court or judge, in place of summons, and served on an officer of the mutual association if there is an officer in the county.

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply.

Section 99. Recourse of aggrieved mutual association -- injunction. (1) A mutual association aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 14 days after possession has been taken, apply to the district court of the county in which its principal office of business is located to enjoin further proceedings by the department.

(2) The court, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the mutual association.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to that time by the consent of the department.

(4) Application must be made on the verified complaint of the mutual association, in the form used in civil actions, and a copy of the complaint must be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve on counsel for the plaintiff an answer to the complaint, also in the form used in civil actions. Any questions

raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation, the department shall take action in relation to the assets of the mutual association necessary to conserve them.

Section 100. Department may retain mutual association employees -- liquidating agent's salary and expenses. (1) The department may retain those officers or employees of the mutual association that it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the mutual association that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent must be borne equally and ratably by the mutual association or mutual associations in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the mutual associations. The funds for those expenses must be raised by assessing each mutual association in ratio set forth in this section and paying those expenses directly to the persons entitled to them, without depositing any of the funds in the state treasury.

Section 101. Compensation of agents and attorneys. (1) Except as provided in subsection (2), after notice to the mutual association and subject to approval by a district court judge of the county in which the mutual association is located, the compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a mutual association whose assets and business have been taken possession of by the department must be fixed by the department. The department shall, on written request of the judge, supply semiannual statements showing the

condition of the mutual association in the process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants must be fixed and approved before services are rendered. The compensation must be paid out of the funds of the mutual association in the hands of the department and are a proper charge and lien on the assets of the mutual association.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements in subsection (1) do not apply.

Section 102. Notice to creditors of insolvent mutual association. (1) Except as provided in subsection (2), the department shall give notice by advertisement once a week for 2 successive weeks in a newspaper of general circulation in the town or city where the mutual association is located, if there is one, or in another newspaper that is published in the state and designated by the department. The notice must call on all persons who have claims against the mutual association to present them to the department or its authorized agent at a place specified in the notice and to make sworn proof, in a form to be fixed by the department, within the time specified in the notice, not less than 90 days after the date of the first publication. A copy of the notice must be mailed to all persons whose names appear as creditors on the books of the mutual association.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law.

Section 103. Claims -- allowance and rejection. (1) Except as provided in subsection (6), the department may reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice must be given the claimant personally or by common courier with tracking capability and an affidavit of the service of the notice, which is prima facie evidence of service, must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the mutual association in the district court of the county in which the mutual association is located within 90 days after service. An appeal from the department's allowance may also be taken by any party in interest by serving notice on the department, stating the grounds of objection and filing an action in that court within 30 days after

allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law.

Section 104. Payment of claims. (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it must be paid in the order of the priority fixed in this chapter.

(2) Those claims filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the mutual association only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time claims are filed.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the times fixed in subsections (1) through (3) do not apply and claims must be filed in accordance with times fixed pursuant to federal law.

Section 105. Claims -- order of payment -- priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a mutual association liquidated by the department is as follows:

- (a) the expense of liquidation, including compensation of agents, employees, and attorneys;
- (b) all funds of any other mutual association in the process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the mutual association in trust;

(d) debts due depositors or holders of cashier's checks, certified checks, and drafts on correspondent financial institutions or mutual associations, including protest fees paid by them on valid checks or drafts presented after closing of the mutual association, pro rata. All deposit balances of other financial institutions, mutual associations, or trust companies and all deposits of public funds of every kind except those actually placed on special deposit under the statutes providing for deposit, including those of the United States, this state, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured and whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the mutual association, is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) without regard to the priority computed from the date of closing of the mutual association in accordance with the provisions of 25-9-205; and

(f) unliquidated claims for damages and similar claims.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) or in preference to the payment of any claims of creditors within those subsections, pay off and discharge any lien, claim, or charge against the assets or property of the mutual association in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and property on which the mutual association has liens by mortgage or otherwise. The department may create a fund or retain, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a mutual association or loans or discounts that have been outstanding as rediscounts of a mutual association prior to the closing of it is not available to the other creditors of the mutual association in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section must be allowed.

(4) Deposits of a person, firm, or corporation in a mutual association that is in the possession of the department may be offset against any indebtedness subject to subsection (3).

Section 106. Claims -- partial payments -- assignments. (1) At any time after taking possession of the mutual association and prior to the expiration of the period fixed for filing of claims, and if under the circumstances of the particular case it considers it expedient and safe and if it has on hand in cash sufficient funds in excess of the expenses of liquidation, the department may make pro rata distribution to any class of creditors entitled to distribution in the order of priority fixed in this chapter. The department shall make a payment to the creditors as they appear on the books and records of the mutual association and after determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the mutual association and from time to time after that date when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and make payments to all creditors of the mutual association pro rata in the order of their priority. If, after the time fixed for presentation of claims against the mutual association has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due the person as compared with the amounts paid to other creditors, nothing more may be paid to that creditor until the payment made to other creditors places them on equal footing.

(3) Claims against a mutual association in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding on the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the mutual association. An assignment must be made by filing written notice, signed by the original claimant, with the department or person in charge of the mutual association. Assigned claims may not be offset against obligations due the mutual association. A check or draft drawn against a mutual association closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the mutual association or as an assignment of any amount, whether protested or not protested.

Section 107. Deposit of funds in department's hands. All funds in the hands of the department belonging to a mutual association in process of liquidation must be deposited in the department's name in those financial institutions in the state and designated by it and subject to its checks. Those funds must be preferred

and protected as provided in this chapter.

Section 108. Disposition of unclaimed funds. (1) The department shall certify to the state treasurer a complete list of funds remaining with the department that are uncalled for and that have been left with it in its official capacity in trust for depositors in and creditors of a liquidated mutual association after the funds have been held by the department for 6 months from the date of the final liquidation of the institution. Along with this certificate, the department shall transmit to the state treasurer the funds, with accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund.

(3) A depositor or creditor of a liquidated mutual association who has not been paid the amount standing to the person's credit as certified to the state treasurer may apply to the department for the amount due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the state treasurer, who shall audit the claim and, if the claim is found to be correct, certify the claim to the department. If the department approves the claim, it shall pay the claim to the depositor or creditor.

Section 109. Disposition of assets remaining after payment of claims. (1) (a) Except as provided in subsection (4), when the department has paid to each depositor and creditor of the mutual association whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the mutual association is located.

(b) If there are remaining assets on hand, the department may apply to the judge of the district court for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the mutual association while it was a going concern, to the directors of the mutual association in office at the time of closing it, as trustees for members, or to some other person, if any, designated as trustee by a majority of the members. The report and petition must be set for hearing on notice

that the court may direct.

(c) Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the mutual association. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties.

(d) The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the members as their rights may appear or dispose of the proceeds in some other manner as the members by majority action direct.

(e) On request of a majority of the members, the court may order the department to close up the trust as provided in subsection (2).

(2) (a) If the assets of the mutual association are insufficient for making payments in full to the depositors and creditors of the mutual association, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the mutual association with the clerk of court of the county in which the mutual association is located. On notice that the court may order, the report must be set for hearing before the court and, if the report is found correct and all funds accounted for, the court shall approve it.

(b) The department may at the same time and in the report make application to the district court of the county in which the mutual association is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the mutual association. The charter of the mutual association must be forfeited, and all of the stationery, correspondence, books, and records kept by the mutual association while it was a going concern and considered by the department to be of no value may be destroyed. However, correspondence or records may not be destroyed until 10 years after the date the mutual association ceases to be a going concern.

(3) On application for orders as provided in this section, the mutual association must be made a party by notice issued on order of the court or judge and served in a manner the court directs, and applications authorized by this section may be heard at any time on not less than 5 days' posted or served notice of the

hearing.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) through (3) do not apply.

Section 110. Further duties of liquidating officer. (1) The liquidating officer of a mutual association may decide when the assets of a failed mutual association are not sufficient to pay the debts, contracts, engagements, and liabilities and may determine the time when and the court where necessary legal proceedings are conducted, subject to the general provisions of law governing venue and place of trial.

(2) For the purposes of this section, the term "liquidating officer" includes any person legally empowered to liquidate the business and affairs of a state mutual association, whether the liquidation is by the department or by its deputies and agents. The term also includes all receivers of state mutual associations qualified to liquidate a state mutual association under state law.

Section 111. Department to file inventory -- report required -- exception. (1) Except as provided in subsection (2), the department shall, within 90 days after taking charge of an insolvent mutual association, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent mutual association, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured.

(2) The department shall every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the mutual association, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report must contain other information the court requires, so that the court and the public may be apprised of the condition of the mutual association and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the mutual association and the manner in which claims are being paid. The report and account must be set for hearing on the notice the court may require and, if found to be correct, must be approved by the court.

Section 112. Definitions. As used in [sections 113 through 116], unless the context requires

otherwise, the following definitions apply:

(1) "Emergency" means any condition or occurrence that may interfere physically with the conduct of normal business operations at any of the offices of a mutual association or that poses an imminent or existing threat to the safety or security of persons or property or both. Situations that an emergency may arise as a result of include but are not limited to:

- (a) fire;
- (b) flood;
- (c) earthquake;
- (d) hurricanes;
- (e) wind, rain, or snowstorms;
- (f) labor disputes or strikes;
- (g) power failures;
- (h) transportation failures;
- (i) interruption of communication facilities;
- (j) shortages of fuel, housing, food, transportation, or labor;
- (k) robbery or attempted robbery;
- (l) actual or threatened enemy attack;
- (m) epidemics or other catastrophes; or
- (n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

(2) "Mutual association" includes state mutual associations, any person or association of persons lawfully carrying on the business of mutual associations, whether incorporated or not, and, to the extent that the provisions of [sections 113 through 116] are not inconsistent with and do not infringe on paramount federal law, also includes federal savings associations.

(3) "Office" means any place at which a mutual association transacts its business or conducts operations related to its business.

(4) "Officer" means a person or persons designated by the board of directors, board of trustees, or other governing body of a mutual association to act for the mutual association in carrying out the provisions of [sections 113 through 116] or, in the absence of a designation or of the officer or officers designated, the

president or any other officer currently in charge of the mutual association or of the office or offices involved.

Section 113. Power of department. When the department feels that an emergency exists or is impending in this state or in any part of this state, it may, by proclamation, authorize mutual associations located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending that affects or may affect a particular mutual association or mutual associations, or a particular office or offices of a particular mutual association, but not mutual associations located in the area generally, it may authorize the particular mutual association or mutual associations or office or offices so affected to close. The closed office or offices must remain closed until the department proclaims that the emergency has ended or until an earlier time that the officers of the mutual association determine that one or more of the closed offices should reopen and, in either event, for the amount of time afterward as may reasonably be required for them to reopen.

Section 114. Powers of officers. (1) When the officers of a mutual association feel that an emergency exists or is impending that affects or may affect any of a mutual association's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any business day or, if the offices have opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office closed in this way shall remain closed until the officers determine that the emergency has ended and for a further time afterward as may reasonably be required for them to reopen. However, an office may not remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

- (2) The officers of a mutual association may close any of the mutual association's offices on any day:
- (a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; or
 - (b) that the federal reserve bank of Minneapolis is not open for business.

Section 115. Notice of mutual association closing. A mutual association closing an office under

authority granted under [section 114] shall give to the department as prompt notice of its action as conditions will permit and by any means available. In the case of a federal savings association, the notice must be given to the comptroller of the currency.

Section 116. Effect of closing. (1) A day on which a mutual association or any of its offices is closed during any part of its normal mutual association hours under [sections 113 and 114] with respect to that mutual association or, if not all of its offices are closed, then with respect to the office or offices that are closed is a legal holiday for all purposes with respect to any mutual association business. No liability or loss of rights of any kind on the part of a mutual association, or a director, officer, or employee of the mutual association, may accrue or result by virtue of a closing authorized by [sections 113 and 114].

(2) The provisions of [sections 112 through 116] are in addition to any other law of this state or of the United States authorizing the closing of a mutual association or excusing the delay by a mutual association in the performance of its duties and obligations because of emergencies or conditions beyond the mutual association's control or otherwise.

Section 117. Definition of savings institution. As used in [sections 117 through 122], the term "savings institution" means a mutual association that is organized under the laws of this state.

Section 118. Savings institutions empowered to receive federal deposit insurance corporation aid. (1) A savings institution may, on the authority of its board of directors or a majority of the board, enter into the contracts, incur the obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to savings institutions or to their depositors, creditors, conservators, or liquidators by virtue of the provisions of the Federal Deposit Insurance Act that establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard savings institutions and their depositors.

(2) A savings institution may subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements

from time to time adopted by that corporation.

Section 119. Appointment of corporation as agent in liquidation. If a savings institution whose deposits are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. 1811 through 1831, is closed on account of the savings institution's inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist the department or act for it in the liquidation of that savings institution.

Section 120. Subrogation of corporation. Whenever any savings institution has been closed as provided in [section 119] and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed savings institution, the federal deposit and insurance corporation, whether or not it has been appointed agent of the department in the liquidation of the closed savings institution, must be and become subrogated by operation of law to all rights against the closed savings institution of each owner of a claim for deposit to the extent necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured savings institutions.

Section 121. Examinations by corporation. (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted of a savings institution by the department, the examination made of the savings institution within a reasonable period by the federal deposit insurance corporation if a signed copy of the examination is furnished to the department.

(2) The department may also, in its discretion, accept a report relative to the condition of a savings institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the savings institution by the department, if a copy of the report is furnished to the department.

(3) The department may, in its discretion, disclose to the corporation, or an official or examiner of the corporation, any information possessed by the department with reference to the conditions or affairs of an insured savings institution. The department may furnish to the corporation or to an official examiner of the corporation a copy or copies of any examinations made of those savings institutions and of any reports made

by them.

Section 122. Closed savings institutions empowered to borrow from corporation. (1) If a savings institution is closed on account of the savings institution's inability to meet the demands of its depositors, by action of the department, by action of its directors, or in the event of its insolvency or suspension, the department or the department's agent may borrow from the corporation and furnish any of the assets of the savings institution to the corporation as security for a loan from the corporation. The department may sell to the corporation any part or all of the assets of the savings institution.

(2) The provisions of this section do not limit the power of a savings institution or the department to pledge or sell assets in accordance with any existing law.

Section 123. Definitions. As used in [sections 123 through 135], the following definitions apply:

- (1) "Board member" means a member of the board of directors of the institution.
- (2) "Cease and desist order that has become final" means a cease and desist order or an order with respect to which:
 - (a) a timely petition for review of the action has not been filed; or
 - (b) the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.
- (3) "Institution" means a state mutual association.
- (4) "Violation" includes without limitation any action, alone or with others, that causes, counsels, aids, or abets a violation.

Section 124. Notice of charges -- hearing -- cease and desist order -- effective date. (1) If the department has reasonable cause to believe that any institution is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating, has violated, or is about to violate a law or rule, the department may issue and serve on the institution a notice of charges. The notice must contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and must fix a time and place at which an administrative hearing pursuant to Title 2, chapter 4, part

6, will be held to determine whether an order to cease and desist should be issued against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the hearings examiner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it is considered to have consented to the issuance of the cease and desist order. In the event of consent or if upon the record made at any such hearing the hearings examiner finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the commissioner may issue and serve on the institution an order to cease and desist from the practice or violation. By provisions that may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) A cease and desist order becomes effective at the expiration of 30 days after the service of the order on the institution, except in the case of an order issued on consent, which is effective at the time specified. The cease and desist order remains effective and enforceable, except to the extent it is stayed, modified, terminated, or set aside by the action of the commissioner or a reviewing court.

Section 125. Informal conferences -- time for application. Within 15 days after service of the notice of charges, either the institution or the department may request an informal conference to discuss the charges and the possible disposition of the charges without a formal hearing process. The conference must be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the department may withdraw charges and proceedings for a cease and desist order.

Section 126. Temporary cease and desist order -- grounds for issuance -- effective date -- injunctive relief. (1) (a) Whenever the department determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served on the institution pursuant to [section 124(1)] or the continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the department may issue a temporary order requiring the institution to cease and desist from the violation or practice.

(b) The order must contain a statement of the facts constituting the alleged violation or unsafe or unsound practice.

(c) The order is effective upon service of the order on the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), remains effective and enforceable until the completion of the administrative proceedings pursuant to the notice of charges, until the department dismisses the charges specified in the notice, or until a cease and desist order that is issued against the institution after the hearing becomes effective.

(2) Within 14 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served on the institution under [section 124(1)]. The court has jurisdiction to issue the injunction.

Section 127. Notice of intention to remove board member or officer -- prohibiting participation -- suspension. (1) The department may serve on a board member or officer of an institution a written notice of intention to remove the member or officer from office whenever the department has reasonable cause to believe that:

- (a) the board member or officer has:
 - (i) committed any violation of law involving dishonesty or breach of trust;
 - (ii) violated a cease and desist order that has become final;
 - (iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or
 - (iv) committed or engaged in any act, omission, or practice that constitutes a breach of the member's or officer's fiduciary duty as a board member or officer of the institution; and
- (b) the institution has suffered or will likely suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of the board member or officer.

(2) The department may serve on a board member, officer, or other person of an institution a written notice of intention to remove the individual from office or to prohibit the individual's further participation in any

manner in the conduct of the affairs of the institution if:

(a) in the opinion of the department, the board member or officer has, by conduct or practice with respect to another institution or business organization that has resulted in substantial financial loss or other damage to that institution or business organization, evidenced the member's or officer's personal disability and unfitness to continue as a board member or officer of the institution; or

(b) the department has reasonable cause to believe that any other person participating in the conduct of the affairs of the institution has, by conduct or practice with respect to the institution, another institution, or other business organization that has resulted in substantial financial loss or other damage to the institution or business organization, evidenced the person's personal disability and unfitness to participate in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit the individual's participation in the conduct of the affairs of an institution must contain a statement of the facts constituting grounds for the removal or prohibition and must fix a time and place at which a hearing will be held on the removal or prohibition. The hearing must be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the hearings examiner at the request of the individual and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, the individual must be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if on the record made at the hearing the hearings examiner finds that any of the grounds specified in the notice have been established by a preponderance of the evidence, the commissioner may issue orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution, as the commissioner considers appropriate. The order becomes effective 30 days after service on the institution and the individual concerned, except in the case of an order issued on consent, which becomes effective at the time specified in the order. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of a reviewing court.

Section 128. Informal conferences -- time for application. Within 15 days after service of the notice of charges sent pursuant to [section 127], the board member, officer, or other person may request an

informal conference to discuss the charges and the possible disposition of the charges without a formal hearing process. The conference must be carried out in accordance with 2-4-603. Upon a proper showing, the department may withdraw charges and proceedings for a cease and desist order.

Section 129. Suspension or prohibition effective on service -- stay. (1) (a) With respect to any board member, officer, or other person of an institution to whom notice is sent pursuant to [section 127], if the department considers it necessary for the protection of the institution or the interests of its depositors that the individual be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the department may serve on the individual a written notice suspending the individual from office or prohibiting the individual from further participation in any manner in the conduct of the affairs of the institution.

(b) The notice must contain a statement of the facts constituting grounds for the order and must fix a time, not later than 14 days from the date of the service of the notice, at which a hearing will be held to afford the individual the opportunity to respond.

(c) The suspension or prohibition is effective on service of the notice, and unless stayed by a court in proceedings authorized by subsection (2), remains in effect until:

(i) the completion of the administrative proceedings pursuant to the notice served under [section 126];
(ii) the department dismisses the charges specified in the notice; or
(iii) the order of removal or prohibition that is issued against the board member, officer, or other person becomes effective.

(d) Copies of the notice must also be served on the institution of which the individual is a director or officer or in the conduct of whose affairs the individual has participated.

(2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served on the individual under [section 126]. The court has jurisdiction to stay the suspension or prohibition.

Section 130. Felony charges -- suspension or prohibition. (1) (a) If a board member, officer, or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the department by written notice served on the individual may suspend that individual from office or prohibit that individual from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service on the individual.

(b) The notice must contain a statement of the facts constituting grounds for the order and must fix a place and time, not later than 14 days from the date of the notice, at which a hearing will be held to afford the individual the opportunity to respond. A copy of the notice must also be served on the institution.

(c) The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the commissioner.

(2) Within 14 days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) (a) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at the time that the judgment is not subject to further appellate review, the department may issue and serve on the individual an order removing that individual from office or prohibiting that individual from further participation in any manner in the conduct of the affairs of the institution except with the consent of the commissioner. A copy of the order must also be served on the institution, and upon receipt the board member or officer, if applicable, ceases to be a board member or officer of the institution.

(b) A finding of not guilty or other disposition of the charge does not preclude the department from instituting proceedings to suspend or remove the individual from office or to prohibit further participation in the affairs of the institution pursuant to [sections 127 and 128].

Section 131. Board of directors -- lack of quorum -- temporary board members. (1) If at any time because of the suspension or removal of one or more board members pursuant to [sections 123 through 135] the board of directors of an institution has less than a quorum of board members not suspended or removed, all

powers and functions vested in or exercisable by the board vest in and are exercisable by the board members not suspended or removed until a time when there is a quorum of the board members.

(2) If all of the board members have been suspended or removed, the commissioner shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until a time when their successors are duly elected and take office.

Section 132. Hearings -- decision -- review, modification, termination, or stay of orders. (1) A hearing provided for in [sections 123 through 135] must be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing must be private unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. Within 90 days after the case has been submitted for final decision, the hearings examiner shall render a decision, which must include findings of fact on which the decision is based. The commissioner shall comply with 2-4-623 and issue and serve on each party to the proceeding an order consistent with the provisions of this section.

(2) (a) Any party to the hearing or any person required by an order issued under [sections 123 through 135] to cease and desist from any of the violations or practices stated in the order or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order. The review must be pursuant to the Montana Administrative Procedure Act.

(b) Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the commissioner, at any time, on notice and in a manner that the commissioner considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

Section 133. Notices and orders -- manner of service -- copies to federal authorities. Any service required or authorized to be made by the department pursuant to [sections 123 through 135] must be made on individual board members and officers by personal service and may be made on institutions by registered or certified mail or common courier with tracking capability or in any manner reasonably calculated to

give actual notice as the department by rule or otherwise may provide. Copies of any notice or order served by the commissioner pursuant to the provisions of [sections 123 through 135] on any institution or any board member, officer, or other person participating in the conduct of the institution's affairs may also be sent to the appropriate federal supervisory authorities.

Section 134. Enforcement of notices or orders. The commissioner may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under [sections 123 through 135]. The court has jurisdiction to require compliance.

Section 135. Violation of notice or final order -- penalties. Any present or former board member or officer of an institution or any other person against whom an outstanding and effective notice or final order has been served pursuant to [section 127, 129, or 130] is subject to the penalties in [section 4(5)] if the individual:

- (1) participates in any manner in the conduct of the affairs of the institution;
- (2) directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in the institution; or
- (3) without the prior written approval of the commissioner, votes for a board member or serves as a board member, officer, or employee of the institution.

Section 136. Repealer. The following sections of the Montana Code Annotated are repealed:

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| 32-2-101. | Purpose -- definitions. |
| 32-2-102. | Fees paid into state treasury. |
| 32-2-103. | Application of chapter. |
| 32-2-104. | Conformity required. |
| 32-2-105. | Laws of other states -- reciprocity. |
| 32-2-106. | Penalties. |
| 32-2-107. | Obtaining property by fraud -- false report -- refusal to permit inspection of books. |
| 32-2-108. | Purchase of obligations of association by officer. |

- 32-2-109. Purchase of assets of association by officer.
- 32-2-110. Payments to be made by building and loan associations.
- 32-2-111. Equality of rights.
- 32-2-201. Articles of incorporation -- contents.
- 32-2-202. Certified copy of articles prima facie evidence.
- 32-2-203. Evidence of corporate existence or capacity.
- 32-2-204. Bylaws.
- 32-2-205. Investigation -- certificate of incorporation, how issued.
- 32-2-206. Directors -- meetings -- officers.
- 32-2-207. Removal of directors.
- 32-2-208. Meetings of members or stockholders.
- 32-2-209. Notice of meetings.
- 32-2-210. Proxies.
- 32-2-211. Transfer of stock or account -- effect.
- 32-2-212. Requirements of transfer in certain cases.
- 32-2-232. Organization of mutual associations.
- 32-2-233. Expense fund for mutual association.
- 32-2-241. Organization of capital stock associations.
- 32-2-242. Capital stock association -- surplus fund -- verification statement.
- 32-2-243. Issuance of capital stock.
- 32-2-244. Restrictions on capital stock.
- 32-2-245. Purchase of stock of deceased stockholder.
- 32-2-251. Mutual and capital stock conversions.
- 32-2-252. Department approval.
- 32-2-253. Submission to members or stockholders.
- 32-2-254. Conversion of mutual to capital stock association -- mandatory plan requirements.
- 32-2-255. Conversion of capital stock to mutual association -- mandatory plan requirements.
- 32-2-256. Issuance of certificate -- continuance of entity.

- 32-2-257. Continuance of rights and obligations.
- 32-2-261. Foreign associations -- requirements.
- 32-2-262. Consent of agent.
- 32-2-263. Contracts void if made before compliance with law.
- 32-2-264. Shares of stock and savings accounts subject to attachment.
- 32-2-271. Consolidation and transfer -- branching prohibited.
- 32-2-301. Examinations by department.
- 32-2-302. Reports and accounts prescribed by department.
- 32-2-303. Reports of condition -- contents -- publication.
- 32-2-304. Removal of directors, officers, or employees.
- 32-2-305. Department to approve contracts paying income to person other than association -- penalty for not securing.
- 32-2-306. Department report.
- 32-2-307. Reports and examinations by department confidential.
- 32-2-308. Membership in federal home loan bank.
- 32-2-309. Insolvency or impairment of association -- powers of department.
- 32-2-401. Powers and duties of building and loan associations.
- 32-2-402. Limit on interest and penalties.
- 32-2-403. Statement of interest rates -- canceling loans.
- 32-2-404. Savings account withdrawal.
- 32-2-405. Pledging association assets.
- 32-2-406. Investments.
- 32-2-407. Real estate loans limited by congress.
- 32-2-408. Bonds of officers, agents, and employees.
- 32-2-409. Employment of agents -- licenses and revocation thereof.
- 32-2-410. Fund for contingent losses.
- 32-2-411. Payment of expenses -- losses -- dividends -- reserve fund.
- 32-2-412. Annual statements.

- 32-2-413. Form of statement -- where filed.
- 32-2-414. Interest or commissions not included in profits.
- 32-2-415. Limitation on loans.
- 32-2-416. Joint ownership.
- 32-2-417. Trust -- payment.
- 32-2-418. Savings held by minor.
- 32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944.
- 32-2-431. Voluntary liquidation and settlement.
- 32-2-432. Reorganization of associations under liquidation.
- 32-2-441. Conversion into federal savings and loan associations.
- 32-2-442. Effect of conversion of association -- powers and privileges.
- 32-2-501. Associations empowered to make loans on securities authorized by National Housing Act.
- 32-2-502. Transactions exempt from operation of state laws.
- 32-2-503. Application of sections.

Section 136. Codification instruction. [Sections 1 through 135] are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to [sections 1 through 135].

- END -

I hereby certify that the within bill,
SB 308, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 308

INTRODUCED BY J. WELBORN, K. WALSH, M. SWEENEY

AN ACT GENERALLY REVISING BANKING LAWS; PROVIDING FOR THE MUTUAL SAVINGS AND LOAN ASSOCIATION ACT; PROVIDING ADMINISTRATIVE HEARING AND PENALTIES; PROVIDING CRIMINAL LIABILITIES; PROVIDING FOR EXAMINATIONS BY THE DEPARTMENT; PROVIDING FOR MUTUAL ASSOCIATIONS; PROVIDING FOR DEPARTMENT RULEMAKING; PROVIDING REPORTS FOR THE DEPARTMENT; PROVIDING FOR CONFIDENTIALITY; PROVIDING PROHIBITED PRACTICES; PROVIDING FOR FORMATION OF A MUTUAL ASSOCIATION; PROVIDING FOR DEPARTMENT INVESTIGATIONS; PROVIDING FOR ARTICLES OF INCORPORATION AND BYLAWS REQUIREMENTS; PROVIDING FOR A CERTIFICATE OF AUTHORITY TO COMMENCE BUSINESS; PROVIDING FOR CONVERSION FROM A FEDERAL MUTUAL SAVINGS AND LOAN TO A STATE MUTUAL SAVINGS AND LOAN; PROVIDING FOR CONVERSIONS INTO FEDERAL SAVINGS AND LOAN ASSOCIATIONS; PROVIDING REQUIREMENTS OF A STATE MUTUAL ASSOCIATION; PROVIDING REQUIREMENTS FOR MEMBERSHIP IN A FEDERAL HOME LOAN BANK; PROVIDING FOR MERGERS OF MUTUAL ASSOCIATIONS; PROVIDING FOR SALES OF BRANCHES; PROVIDING FOR BUILDING AND LOAN ASSOCIATIONS AND REQUIREMENTS; PROVIDING FOR INVESTMENT IN CERTAIN SECURITIES; PROVIDING FOR CERTIFIED CHECKS; PROVIDING DEPOSIT REQUIREMENTS; PROVIDING GENERAL PROVISIONS; PROVIDING DEPARTMENT RESPONSIBILITY; PROVIDING FORMATION AND REORGANIZATION REQUIREMENTS; PROVIDING FOR OPERATION AND REGULATION; PROVIDING FOR DISSOLUTION, CLOSING, AND LIQUIDATION; PROVIDING FOR FEDERAL DEPOSIT INSURANCE CORPORATIONS; PROVIDING FOR REMOVAL OF DIRECTORS OR OFFICERS OF FINANCIAL INSTITUTIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND REPEALING SECTIONS 32-2-101, 32-2-102, 32-2-103, 32-2-104, 32-2-105, 32-2-106, 32-2-107, 32-2-108, 32-2-109, 32-2-110, 32-2-111, 32-2-201, 32-2-202, 32-2-203, 32-2-204, 32-2-205, 32-2-206, 32-2-207, 32-2-208, 32-2-209, 32-2-210, 32-2-211, 32-2-212, 32-2-232, 32-2-233, 32-2-241, 32-2-242, 32-2-243, 32-2-244, 32-2-245, 32-2-251, 32-2-252, 32-2-253, 32-2-254, 32-2-255, 32-2-256, 32-2-257, 32-2-261, 32-2-262, 32-2-263, 32-2-264, 32-2-271, 32-2-301, 32-2-302, 32-2-303, 32-2-304, 32-2-305, 32-2-306, 32-2-307, 32-2-308, 32-2-309, 32-2-401, 32-2-402, 32-2-403, 32-2-404, 32-2-405, 32-2-406, 32-2-407, 32-2-408, 32-2-409, 32-2-410, 32-2-411, 32-2-412, 32-2-413, 32-2-414, 32-2-415, 32-2-416, 32-2-417, 32-2-418, 32-2-420, 32-2-431, 32-2-432, 32-2-441, 32-2-442, 32-2-501, 32-2-502, AND 32-2-503, MCA.